APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,965	03/21/2006	Fabrice T. P. Saffre	36-1968	4560

23117   7590   02/01/2010
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EXAMINER
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ART UNIT	PAPER NUMBER
2462	

MAIL DATE	DELIVERY MODE
02/01/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)	
Office Action Summary	10/572,965	SAFFRE, FABRICE T. P.	
	Examiner	Art Unit	
	KHOA HUYNH	2462	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 October 2009</u>.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>3,4 and 7-12</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>3,4 and 7-12</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is in response to the Applicants' amendment received on

10/07/2009.

Claim Status

2.   Claims 3-4, 7-10 are amended.

3.   Claims 1-2, 5-6 are cancelled.

4.   Claims 11-12 are newly added.

5.   Claims 3-4, 7-12 are currently presenting for examination, with claims 3, 11 and

12 being independent.

6.   This action has been made **FINAL**.

Response to Arguments

7.   Applicants' arguments filed 10/07/2009 have been fully considered but are not

persuasive and moot in view of the new ground(s) of rejection.

8.   The followings are Examiner response to applicants' arguments.

9.   First of all, Examiner would like to express gratitude to Applicants' representative

for the time he spent on writing such detailed response which superbly clarified a lot of

vague aspects of the claimed invention.

10.   Examiner would further appreciate it if in the next response, a few more answers

could be provided to resolve the following uncertainties.

11.   On page 7, Applicant's representative mentions that from a technical perspective

any device currently online is "requiring access". Examiner respectfully disagrees. Since

the claim language doesn't specify what the communications resource is, the device

could be online but not requiring access to such resource.

12.   On page 8, Applicant's representative mentions that "each user is at a different

level". This language is not in the claims. Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See In

re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

13.   On page 9, it seems Applicant's representative might have a different

interpretation of the terms "unity" and "unique" from the interpretation of one of ordinary

skills in the art. Unity just means one and unique just means not typical. Again, although

the claims are interpreted in light of the specification, limitations from the specification

are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057

(Fed. Cir. 1993).

14.   On page 10-11, Applicant's representative mentions that "In Applicant's

invention, however, the rankings would be 1st, 2nd, 3rd, 4th and 5th, respectively. As

the rankings are defined only in relative terms, the rankings and therefore allocations

would of course remain the same when everyone doubles their usage. Thus the ranking

in Applicant's invention is independent of the quantity of usage - the person who uses

least, however much that is, gets top ranking. Even if the lowest user quadruples his

usage but remains the lightest user, he will still get top ranking... The ranking in

Applicant's invention is independent of the (quantified) actual amount used...". This

language is not in the claims. Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See In re

Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

15.   The referenced citations made in the rejection(s) are intended to exemplify areas

in the prior art document(s) in which the Examiner believed are the most relevant to the

claimed subject matter. However, it is incumbent upon the applicant to analyze the prior

art document(s) in its/their entirety since other areas of the document(s) may be relied

upon at a later time to substantiate examiner's rationale of record.

16.   Therefore, in the next response, Examiner would appreciate it if Applicants'

representative could clearly point out any other patentable novelty, beside what is

already indicated as allowable subject matter by Examiner, that he or she thinks the

claimed invention presents in view of the state of the art disclose by the references as a

whole.

Claim Objections

17.   Claims 4, 7-10 are objected to because of the following informalities: these

claims depend on subsequent claims 11 and 12. A dependent claim should refer to a

preceding claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

18.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

19.   **Claims 3-4, 7-12** are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention.

20.   Claim 3-4, 7-12 contain limitation "users currently require access". The original

specification only discuss about users "currently on line" not "currently requiring

access".

Claim Rejections - 35 USC § 112

21.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

22.   **Claims 3-4, 7-12** are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

23.   Regarding claims 3-4, 9, 11 the phrase "a measurement of usage of the resource

made by each member of the plurality of users" renders the claim indefinite because it is

unclear whether a measurement is made by each member or only usage of resource is

made by each member. Similarly, phrase "measurements of usage made by each

member" is also questioned on the same issue.

24.   Regarding claims 7-8, 10, 12, the phrase "measurements of usage made by each

member" renders the claim indefinite because it is unclear whether a measurement is

made by each member or only usage is made by each member.

Claim Rejections - 35 USC § 103

25.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

26.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
       obviousness or nonobviousness.

27.   **Claims 4, 9-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over

over Amalfitano, US 2001/0033557 in view of Otis US 6,085,241.

28.   **For claim 11**. Amalfitano teaches: A method of controlling access to a

communications resource (Amalfitano, page 1, paragraph 8, lines 7-8, "a scheme for

assigning priority levels to users based upon a history of their request for access to the

resources") in which capacity made available to each of a plurality of users is limited to

a maximum value which bears an inverse relationship to a measure, made over a

previous period, of usage of that resource relative to usage made by other members of

the said plurality of users (Amalfitano, page 1, paragraph 8, lines 8-15, the more

resource a user uses, the less of their requests are granted; relative to the usage made

by other members mean the more resources one user is granted, the less is available to

the rest of the users since resource is limited), said method comprising:

obtain a measurement of usage of the resource made by each member of the

plurality of users over a predetermined period, (Amalfitano, fig 2, usage of each user

over a month is being measured)

using a sorting means (Amalfitano, fig 1, queue 160) to place each member of

the plurality of users that currently requires access to the resource in a rank order

relative to one another, the ranking being made according to the measurements of

usage made by each member, (Amalfitano, page 3, paragraph 41, lines 2-3, users are

ranked relative to other users by putting their access requests in a queue organized by

priority level, which is based measured usage; Amalfitano, page 1, paragraph 8, lines 8-

15, "If a user has, over a historical period of time, made fewer demands than a stated amount, that user is given a higher priority than a user who has made greater use of the resources than their stated amount")

apply a restriction factor to each user according to that user's position in the rank order and how many users currently require access (Amalfitano, paragraph 55, 57: x and y are restriction factors which are applied to each user, x and y are based on each user's priority level/ranking and p1, p2 which are percent of current user at each level; page 3, paragraph 41, lines 6-7, "As requests are popped off the queue, they are assigned to resources according to priority level"; the more users currently requiring access, the less resources will be available, therefore, the resource available is determined not only by the restriction factor but also the number of users currently require access),

thereby restricting availability of the resource to each of the plurality of users that currently requires access to the resource. (Amalfitano, page 3, paragraph 41, lines 6-7, "As requests are popped off the queue, they are assigned to resources according to priority level"; users with requests are assigned resources)

Amalfitano doesn't teach: measuring means, calculating means

Otis from the same or similar fields of endeavor teaches: measuring means (Otis, column 4, lines 16-19, bandwidth manager 10), calculating means (Otis, column 5, lines 32-35, bandwidth limit value, which is a restriction factor, is calculated using CPU)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Otis into Amalfitano, since

Amalfitano suggests a technique for controlling access, and Otis suggests the beneficial

use of bandwidth manager and CPU to implement such technique (Otis, column 4, lines

16-19, column 5, lines 32-35) since it is well-known in the art to use bandwidth manager

to measure resources and CPU to perform calculation in the analogous art of data

communication.

29.   **For claim 12**. Amalfitano teaches: Apparatus (Amalfitano, fig 1, element 145,

WIF: wireless interface facility) for controlling access to a communications resource

(Amalfitano, page 2, paragraph 32, lines 6-7, "Management and allocation of wireless

channels 130 is provided by WIF 145 and corresponding resources 150") having means

for allocating capacity to each of a plurality of users (Amalfitano, fig 1, element 145,

WIF: wireless interface facility allocates resources to users 105-A to 105-Z) in inverse

relationship to a measure, made over a previous period, of usage of that resource

relative to usage made by other members of the said plurality of users (Amalfitano,

page 1, paragraph 8, lines 8-15, the more resource a user uses, the less of their

requests are granted; relative to the usage made by other users mean the more

resources one user is granted, the less is available to the rest of the users since

resource is limited) , said apparatus comprising:

        measuring usage of the resource made by each member of the plurality of users

over a predetermined period, (Amalfitano, fig 2, usage of each user over a month is

being measured)

sorting means (Amalfitano, fig 1, queue 160) for ranking each member of the plurality of users that currently requires access to the resource in a rank order relative to one another, the ranking being made according to the measurements of usage made by each member, (Amalfitano, page 3, paragraph 41, lines 2-3, users are ranked relative to other users by putting their access requests in a queue organized by priority level, which is based measured usage; Amalfitano, page 1, paragraph 8, lines 8-15, "If a user has, over a historical period of time, made fewer demands than a stated amount, that user is given a higher priority than a user who has made greater use of the resources than their stated amount")

calculating a restriction factor to each member of the plurality of users that currently requires access to the resource according to that user's position in the rank order and how many users currently require access to the resource. (Amalfitano, paragraph 55, 57: x and y are restriction factors which are applied to each user, x and y are based on each user's priority level/ranking and p1, p2 which are percent of current user at each level; page 3, paragraph 41, lines 6-7, "As requests are popped off the queue, they are assigned to resources according to priority level"; the more users currently requiring access, the less resources will be available, therefore, the resource available is determined not only by the restriction factor but also the number of users currently require access)

Amalfitano doesn't teach: measuring means, calculation means

Otis from the same or similar fields of endeavor teaches: measuring means (Otis, column 4, lines 16-19, bandwidth manager 10), calculation means (Otis, column 5, lines 32-35, bandwidth limit value, which is a restriction factor, is calculated using CPU)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Otis into Amalfitano, since Amalfitano suggests a technique for controlling access, and Otis suggests the beneficial use of bandwidth manager and CPU to implement such technique (Otis, column 4, lines 16-19, column 5, lines 32-35) since it is well-known in the art to use bandwidth manager to measure resources and CPU to perform calculation in the analogous art of data communication.

30.   **For claim 4**. Amalfitano and Otis disclose all the limitations of claim 11, and Amalfitano further teaches: in which the restriction factor allocated to the user having made the least usage over the previous period is unity. (Amalfitano, page 4, paragraph 56, for two priority levels, restriction factor allocated to user having made the least usage is x=1.08, as the number of priority levels increases, x will go to 1, unity)

31.   **For claim 9**. Amalfitano and Otis disclose all the limitations of claim 11, and Amalfitano further teaches: in which each user is given a unique ranking. (Amalfitano, page 1, paragraph 11, lines 1-3, "With the invention, the grade of service experienced by any particular user depends upon historical use, plus the continuity of resource demand"; Since the historical use and demand of each user is unique, the ranking

(users are ranked by putting their requests in a queue) is also unique; unique means not typical)

32.   **For claim 10**. Amalfitano and Otis disclose all the limitations of claim 12, and Amalfitano further teaches: in which the sorting means is arranged to give a unique ranking to each said user requiring access. (Amalfitano, page 1, paragraph 11, lines 1-3, "With the invention, the grade of service experienced by any particular user depends upon historical use, plus the continuity of resource demand"; Since the historical use and demand of each user is unique, the ranking (users are ranked by putting their requests in a queue) is also unique; unique means not typical)

33.   **Claims 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Amalfitano, US 2001/0033557 and Otis US 6,085,241 and further in view of Chuah US 6,567,416.

34.   **For claim 7**. Amalfitano and Otis disclose all the limitations of claim 12, however Amalfitano and Otis fail to teach: associated with a modem associated with a server controlling access to the internet.

Chuah from the same or similar fields of endeavor teaches: associated with a modem (Chuah, fig 1 element 4, modem is associated with the network) associated with a server controlling access to the internet (Chuah, fig 1, element 14: server is capable of controlling access to the internet 20)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Chuah into Amalfitano and Otis, since Amalfitano suggests a technique for controlling access, and Chuah suggests the beneficial use of modem and server when implementing such technique since this configuration is "typically utilized today to provide remote internet access through modems to user computers" (Chuah, column 1, lines 38-40) in the analogous art of data communication.

35.   **For claim 8**. Amalfitano and Otis disclose all the limitations of claim 12, however Amalfitano and Otis fail to teach: associated with a switching system for controlling access to an internet service provider.

Chuah from the same or similar fields of endeavor teaches: associated with a switching system for controlling access to an internet service provider (Chuah, fig 1, element 6: PSTN, public switch telephone network controls access to element 10: ISP, internet service provider)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Chuah into Amalfitano and Otis, since Amalfitano suggests a technique for controlling access, and Chuah suggests the beneficial use of switching system when implementing such technique since this configuration is "typically utilized today to provide remote internet access through modems to user computers" (Chuah, column 1, lines 38-40) in the analogous art of data communication.

Allowable Subject Matter

36.   Claim 3 would be allowable if rewritten or amended to overcome the rejection(s)

under 35 U.S.C. 112, 1st and 2nd paragraphs, set forth in this Office action.

Conclusion

37.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to KHOA HUYNH whose telephone number is (571) 270-

7185. The examiner can normally be reached on Monday - Friday: 10:00 AM - 6:30

PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, SEEMA RAO can be reached on (571) 272-3174. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Seema S. Rao/
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